HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P. NO.13246 OF 1996

Between:
Panga Venkanna Papulu and 8 others

.....Petitioners

AND

Government of Andhra Pradesh represented by
Its Principal Secretary, Revenue (Endowments)
Department, Secretariat, Hyderabad and 29 others

.....Respondents

::ORDER::

Counsel for the Petitioners : Sri Jalli Kanakaiah

Counsel for Respondent Nos. 1 to 3 : Government Pleader

for Endowments

Counsel for Respondent Nos. 4 to 30 : Sri B.Adinarayana Rao

Dated 12/7/2006

In this petition, the petitioners have prayed for quashing communication dated 13.6.1996 sent by Commissioner, Endowments Department to Assistant Commissioner, Endowments, Nalgonda conveying the decision of the Minister for Endowments to stay the auction of land belonging to Sri Seetharamachandra Swamy Temple, Nalgonda with a direction to negotiate disposal of the property with the existing lessees.

The petitioners claim to be landless poor belonging to Scheduled and Lambada castes and weaker sections of the society. They claim to have obtained lease of the land measuring Ac 48.00 comprised in survey No.527/1 of Lingagiri village belonging to the temple of Sri Seetharamachandra Swamy. The term of the lease granted to the petitioners ended on 1.4.1995. Thereafter, the Assistant Commissioner advertised the land for disposal by auction. At that stage, Sri M.Veeraiah and others who were granted lease of the same land in 1990-91 to 1991-92 and who had unsuccessful, filed Writ Petition No. 6797 of 1993 and Writ Appeal No. 193 of 1994 for continuance of their lease, represented to the Minister for Endowments and succeeded in persuading him to stay the auction of the land with a direction to the Assistant Commissioner to negotiate disposal of the property to the erstwhile lessees on their agreeing to pay reasonable market value or to take the land on lease.

The plea of the petitioners is that the decision contained in letter dated 13.6.1996 is ultra vires to Section 80 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act') which envisages disposal of properties of the Charitable Trust and Endowments by public auction.

The official respondents have defended the decision of the Minister concerned by contending that in terms of proviso to
Section 80(1)(c) of the Act, the Government can permit sale of immovable property otherwise than by public auction.

I have heard learned counsel for the parties. Section 80(1) of the Act together

with its proviso on which reliance has been placed by the learned Government Pleader to justify the decision of the Minister to stay the auction of the property reads as under.

Section 80 (1):

80. **Alienation of immovable property**:- (1)(a) Any gift, sale exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be null and void unless any such transaction, not being a gift, is affected with the prior sanction of the Commissioner.

(b) The Commissioner, may, after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any objections and suggestions with the respect thereto and considering all objections and suggestions, if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is,--

(i) prudent and necessary or beneficial to the institution or endowment;

(ii) in respect of immovable property which is uneconomical for the institution or endowment to own and maintain; and

(iii) the consideration therefore is adequate and proper.

(c) Every sale of any such immovable property sanctioned by the Commissioner under Clause (b) shall be effected by tender-cum-public auction in eh prescribed manner subject to the confirmation by the commissioner within a period prescribed:

Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefor in writing, permit the sale of such immovable property, otherwise than by public auction;

Provided further that the Government may purchase the lands situated in Scheduled Areas belonging to institutions or endowments, wherever necessary, otherwise than by public auction and assign such lands to the members of the Scheduled Tribes."

An analysis of the above reproduced provisions show that any gift, sale, exchange, mortgage or any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment is void unless the same is sanctioned by the Commissioner. Clause (b) of Section 80 (1) lays

down the mode of giving sanction for gift etc., of the property belonging to any charitable or religious institution or endowment. Clause (c) lays down that every sale of immovable property sanctioned by the Commissioner shall be effected by tender-cum-public auction in the prescribed manner and the same shall be subject to the confirmation by the Commissioner. Proviso to this clause empowers the Government to permit sale of such immovable property otherwise than by way of public auction. However, exercise of power under the proviso is hedged with the condition that departure from the rule of tender-cum-public auction should be in the interest of the institution or endowment and the Government must record reasons in writing for permitting sale of immovable property otherwise than by public auction.

A reading of the impugned communication shows that before staying the notice issued by the Assistant Commissioner for holding public auction and requiring him to submit proposal based on negotiations made with the erstwhile lessees, the Minister concerned did not record any reason for doing so. That apart, it has neither been pleaded in the counter filed on behalf of the respondents nor any material has been produced before the Court to show that before directing the Assistant Commissioner to negotiate with the erstwhile lessees, the Minister concerned had recorded reasons in writing that it was in the interest of the institution to dispose of the property otherwise than by way of public auction. Thus, there is no escape from the conclusion that the impugned decision is ultra vires to the mandate of Section 80(1)(c) and is liable to be quashed on that ground.

In view of the above conclusion, I do not consider it necessary to deal with other points raised by the petitioners.

In the result, the writ petition is allowed. The decision contained in communication dated 13.6.1996 is quashed with the direction that as and when the competent authority decides to dispose of the land belonging to the temple, the same shall be done in accordance with Section 80(1)(c) of the Act.

G.S.SINGHVI, CJ

Dt.12.7.2006

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